

STATE OF MICHIGAN
COURT OF APPEALS

ROBERT S. MOSER, II,

Plaintiff-Appellee,

v

CITY OF DETROIT and WAYNE COUNTY,

Defendants,

and

MICHIGAN DEPARTMENT OF
TRANSPORTATION,

Defendant-Appellant.

FOR PUBLICATION

June 23, 2009

No. 283922

Wayne Circuit Court

LC No. 06-629396-NP

Advance Sheets Version

Before: Wilder, P.J., and Meter and Servitto, JJ.

WILDER, P.J. (*dissenting*).

I respectfully dissent. I would conclude that the bridge fascia is not a part of “improved portion of the highway designed for vehicular travel” within the meaning of MCL 691.1402(1).

As the majority notes, in *Grimes v Dep’t of Transportation*, 475 Mich 72, 91; 715 NW2d 275 (2006), the Michigan Supreme Court held that “only the travel lanes of a highway are subject to the duty of repair and maintenance specified in MCL 691.1402(1).” The Supreme Court had previously held in *Nawrocki v Macomb Co Rd Comm*, 463 Mich 143, 162; 615 NW2d 702 (2000), that “if the condition is not located in the actual roadbed designed for vehicular travel, the narrowly drawn highway exception is inapplicable” *Id.* at 180. The term “roadbed” is defined as “the material of which a road is composed.” Random House Webster’s College Dictionary (2001). The Supreme Court’s reference to “travel lanes” and “roadbed” make clear that only the portion of the road upon which vehicles are driven is subject to the narrowly drawn highway exception. *Nawrocki*, *supra* at 180. Vehicles are not driven on the fascia of a bridge. As such, plaintiff has failed to show a defect in the improved portion of the highway that would subject the state to liability in this case. I would reverse.

/s/ Kurtis T. Wilder